

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CORNERSTONE ONDEMAND, INC., a
Delaware corporation.

Plaintiff,

vs.

BLATTNER ENERGY, INC., a Minnesota corporation; and DOES 1 through 10, inclusive.

Defendants.

Case No.: 2:18-cv-06845 FMO (JC)

(Assigned to District Judge Fernando M. Olguin and Magistrate Judge Jacqueline Chooljian)

[DISCOVERY MATTER]

STIPULATED PROTECTIVE ORDER

[CHANGES MADE BY COURT TO PARAGRAPHS 3 & 8]

BLATTNER ENERGY, INC. a Minnesota
Corporation,

Counter-Plaintiff

VS.

**CORNERSTONE ONDEMAND, INC. a
Delaware Corporation,**

Counter-Defendant.

1 **A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or
9 items that are entitled to confidential treatment under the applicable legal principles.

10 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.

14 **B. GOOD CAUSE STATEMENT**

15 This action is likely to involve trade secrets, customer and pricing lists and
16 other valuable research, development, commercial, financial, technical and/or
17 proprietary information for which special protection from public disclosure and
18 from use for any purpose other than prosecution of this action is warranted.

19 The claims at issue in this case arise out of a contractual relationship between the
20 parties pursuant to which Plaintiff and Counter-Defendant Cornerstone OnDemand,
21 Inc. (“Cornerstone”) agreed to provide its “software-as-a-service” offering to
22 Defendant and Counter-Claimant Blattner Energy, Inc. (“Blattner”). The discovery in
23 this case is therefore likely to include confidential and other proprietary information
24 including, but not limited to, Cornerstone’s continuing research and development of its
25 software offerings; the use and functionality of the software which is the subject of
26 continuing research and development, the process by which Cornerstone implements
27 and configures its software offerings for consumers and pricing information for
28 Cornerstone’s various software offerings; and information otherwise generally

1 unavailable to the public, or which may be privileged or otherwise protected from
2 disclosure under state or federal statutes, court rules, case decisions, or common law.

3 Accordingly, to expedite the flow of information, to facilitate the prompt
4 resolution of disputes over confidentiality of discovery materials, to adequately protect
5 information the parties are entitled to keep confidential, to ensure that the parties are
6 permitted reasonable necessary uses of such material in preparation for and in the
7 conduct of trial, to address their handling at the end of the litigation, and serve the ends
8 of justice, a protective order for such information is justified in this matter. It is the
9 intent of the parties that information will not be designated as confidential for tactical
10 reasons and that nothing be so designated without a good faith belief that it has been
11 maintained in a confidential, non-public manner, and there is good cause why it should
12 not be part of the public record of this case.

13 **2. DEFINITIONS**

14 2.1 Action: The above-captioned proceeding.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
18 it is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in Good Cause
20 Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this Action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
12 this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
23 their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.

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1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any deposition testimony, conversations, or presentations by Parties
6 or their Counsel that might reveal Protected Material, other than during a court hearing
7 or at trial.

8 Any use of Protected Material during a court hearing or at trial shall be governed
9 by the orders of the presiding judge. This Order does not govern the use of Protected
10 Material during a court hearing or at trial.

11 **4. DURATION**

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
14 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
15 later of (1) dismissal of all claims and defenses in this Action, with or without
16 prejudice; and (2) final judgment herein after the completion and exhaustion of all
17 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
18 for filing any motions or applications for extension of time pursuant to applicable law.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
21 Each Party or Non-Party that designates information or items for protection under this
22 Order must take care to limit any such designation to specific material that qualifies
23 under the appropriate standards. The Designating Party must designate for protection
24 only those parts of material, documents, items, or oral or written communications that
25 qualify so that other portions of the material, documents, items, or communications for
26 which protection is not warranted are not swept unjustifiably within the ambit of this
27 Order.

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1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper purpose
3 (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating Party
5 to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
11 or ordered, Disclosure or Discovery Material that qualifies for protection under this
12 Order must be clearly so designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but
15 excluding transcripts of depositions or other pretrial or trial proceedings), that the
16 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
17 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing
19 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and before
24 the designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or
27 portions thereof, qualify for protection under this Order. Then, before producing the
28 specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to

1 each page that contains Protected Material. If only a portion or portions of the material
2 on a page qualifies for protection, the Producing Party also must clearly identify the
3 protected portion(s) (e.g., by making appropriate markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify the
5 Disclosure or Discovery Material on the record, before the close of the deposition all
6 protected testimony.

7 (c) for information produced in some form other than documentary and for any
8 other tangible items, that the Producing Party affix in a prominent place on the exterior
9 of the container or containers in which the information or item is stored the legend
10 "CONFIDENTIAL." If only a portion or portions of the information or item warrants
11 protection, the Producing Party, to the extent practicable, shall identify the protected
12 portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive the
15 Designating Party's right to secure protection under this Order for such material. Upon
16 timely correction of a designation, the Receiving Party must make reasonable efforts to
17 assure that the material is treated in accordance with the provisions of this Order.

18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's Scheduling
21 Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges and those made for an improper purpose (e.g.,
26 to harass or impose unnecessary expenses and burdens on other parties) may expose the
27 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
28 the confidentiality designation, all parties shall continue to afford the material in

1 question the level of protection to which it is entitled under the Producing Party's
2 designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving
15 Party may disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) The Receiving Party's Outside Counsel of Record in this Action, as well as
17 employees of said Outside Counsel of Record to whom it is reasonably necessary to
18 disclose the information for this Action;

19 (b) The officers, directors, and employees (including House Counsel) of the
20 Receiving Party and their parent companies, if any, to whom disclosure is reasonably
21 necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
23 is reasonably necessary for this Action and who have signed the "Acknowledgment and
24 Agreement to Be Bound" (Exhibit A);

25 (d) The court and its personnel;

26 (e) Court reporters and their staff;

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1 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
2 to whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) The author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action
7 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
8 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
9 permitted to keep any confidential information unless they sign the “Acknowledgment
10 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
11 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
12 depositions that reveal Protected Material must be separately bound by the court
13 reporter and may not be disclosed to anyone except as permitted under this Stipulated
14 Protective Order; and

15 (i) Any mediator or settlement officer, and their supporting personnel, mutually
16 agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
18 **IN OTHER LITIGATION.**

19 If a Party is served with a subpoena or a court order issued in other litigation that
20 compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL,” that Party must:

22 (a) Promptly notify in writing the Designating Party. Such notification shall
23 include a copy of the subpoena or court order;

24 (b) Promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or
26 order is subject to this Protective Order. Such notification shall include a copy of this
27 Stipulated Protective Order; and

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(c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission, or unless otherwise required by the law or court order. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

**9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION.**

13 (a) The terms of this Order are applicable to information produced by a Non-
14 Party in this Action and designated as “CONFIDENTIAL”. Such information produced
15 by Non-Parties in connection with this litigation is protected by the remedies and relief
16 provided by this Order. Nothing in these provisions should be construed as prohibiting
17 a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party's confidential information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
21 information, then the Party shall:

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(3) Make the information requested available for inspection by the Non-Party, if requested.

(c) If a Non-Party represented by counsel fails to commence the process called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and accompanying information or fails contemporaneously to notify the Receiving Party that it has done so, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If an unrepresented Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court unless otherwise required by the law or court order. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL.**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted to
8 the court.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
19 only be filed under seal pursuant to a court order authorizing the sealing of the specific
20 Protected Material at issue. If a Party's request to file Protected Material under seal is
21 denied by the court, then the Receiving Party may file the information in the public
22 record unless otherwise instructed by the court.

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within 60
25 days of a written request by the Designating Party, each Receiving Party must return all
26 Protected Material to the Producing Party or destroy such material. As used in this
27 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
28 summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
2 must submit a written certification to the Producing Party (and, if not the same person
3 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
4 category, where appropriate) all the Protected Material that was returned or destroyed
5 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
6 compilations, summaries or any other format reproducing or capturing any of the
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
8 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
9 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
10 work product, and consultant and expert work product, even if such materials contain
11 Protected Material. Any such archival copies that contain or constitute Protected
12 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 Dated: October 4, 2018

5 LURIE, ZEPEDA, SCHMALZ, HOGAN &
6 MARTIN
7 LAWRENCE J. IMEL

8 By: /s/ Lawrence J. Imel

9 LAWRENCE J. IMEL
10 Attorneys for Plaintiff and Counter-
11 Defendant Cornerstone OnDemand, Inc.

12 Dated: October 4, 2018

13 LAW OFFICE OF DOMINIC J. MESSIHA, PC
14 DOMINIC J. MESSIHA

15 By: /s/ Dominic Messiha

16 DOMINIC J. MESSIHA
17 Attorneys for Defendant and Counter-
18 Claimant Blattner Energy, Inc.

19 PURSUANT TO STIPULATION AS MODIFIED, **IT IS SO ORDERED.**

20 Dated: October 4, 2018

21 _____
22 /s/
23 Hon. Jacqueline Chooljian
24 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on October 4, 2018 in the case of Cornerstone OnDemand, Inc. v. Blattner Energy Inc., Case No. 2:18-cv-06845 FMO (JC). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my
California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: